

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

TERRA PARTNERS; TERRA XXI, LTD.;
ROBERT WAYNE VEIGEL;
ELLA MARIE WILLIAMS VEIGEL;
VEIGEL FARMS, INC.; VEIGEL CATTLE
COMPANY; and VEIGEL FARM PARTNERS,

Plaintiffs,

v.

No. 2:15-cv-236-J

AG ACCEPTANCE CORPORATION,

Defendant.

MOTION FOR LEAVE TO AMEND PETITION FOR ACCOUNTING, CLAIM FOR UNJUST
ENRICHMENT, IMPOSITION OF CONSTRUCTIVE TRUST,
AND REQUEST FOR DECLARATORY RELIEF

Terra Partners, Terra XXI, Ltd., Robert Wayne Veigel, Ella Marie Williams Veigel, Veigel Farms, Inc., Veigel Cattle Company, and Veigel Farm Partners ("Plaintiffs"), by and through their attorneys Keleher & McLeod, P.A. (Jeffrey Dahl and Justin Breen), for their Motion For Leave To Amend Petition For Accounting, Claim For Unjust Enrichment, Imposition Of Constructive Trust, And Request For Declaratory Relief ("Petition"), state as follows:

This motion is opposed. In the Plaintiff's original petition filed in this litigation, the primary lien at issue in the petition was referred to throughout as a third lien. Counsel has since been informed that there was a previous ruling by this Court on August 18, 2010, noting that Ag Acceptance Corporation's lien at issue herein was a second lien. [See Memorandum Opinion and Order, Case 2:08-cv-00194-J, Doc.97, page 20.] Accordingly, Petitioners desire to amend their petition to reflect that ruling, as well as some other less substantive changes.

The Original Rule 16 Scheduling Order entered in this case [Doc.26] allows until January 25, 2016 for Plaintiffs to amend their petition. Accordingly, this motion is timely. Furthermore, Federal Rule of Civil Procedure 15(a)(2), provides that a court "...should freely give leave [to amend] when justice so requires." Rule 15 "...evinces a bias in favor of granting leave to amend." *Goldstein v. MCI Worldcom*, 340 F.3d 238, 254, (5th Cir. Miss. 2003). Courts should only deny leave to amend for a substantial reason such as "bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of the amendment." *Lucas v. Abbott Labs.*, 2013 U.S. Dist. LEXIS 83651, *4, 2013 WL 2905488 (N.D. Tex. June 13, 2013) citing *Goldstein v. MCI Worldcom*, 340 F.3d 238, 254 (5th Cir. 2003).

None of the factors that would warrant denial of a motion to amend are present here. The amendment seeks only to correct references to the priority of liens. The Defendant will suffer no prejudice should the Court grant leave to amend and the amendment is being made in good faith to reflect a previous ruling by this Court in another matter.

WHEREFORE, Plaintiffs respectfully request that they be permitted to file an amended petition, as reflected on Exhibit A attached hereto.

Respectfully submitted,
KELEHER & MCLEOD, P.A.

By: /s/ Justin B. Breen
Filed Electronically on October 5, 2015
Jeffrey A. Dahl – NM SBN 0622
Justin B. Breen – NM SBN 28108
Post Office Box AA
Albuquerque, New Mexico 87103
Telephone: (505) 346-4646
Facsimile: (505) 346-1370
E-Mail: jad@keleher-law.com
E-Mail: jbb@keleher-law.com
Attorneys for Plaintiffs

CERTIFICATE OF CONFERENCE

I certify that on the 22nd day of September, 2015, Justin B. Breen, attorney for Plaintiffs, contacted by email Barbara Whiten Balliette at the law office of Reid Collins & Tsai LLP, counsel for Defendant Ag Acceptance Corporation, regarding this motion; on this same day, attorney Balliette responded to the referenced email stating her opposition to this motion.

/s/ Justin B. Breen

CERTIFICATE OF SERVICE

THIS HEREBY CERTIFIES that on October 5, 2015, I electronically filed the foregoing document with the Clerk of the Court for the Northern District Of Texas by using the CM/ECF system, which will send a notice of electronic filing to the following CM/ECF participants:

Local Counsel for Plaintiffs:

Philip Roland Russ
Law Offices of Philip R. Russ
2700 S. Western St., Suite 1200
Amarillo, Texas 79109
Telephone: (806) 358-9293
Facsimile: (806) 358-9296
E-Mail: PhilipRRuss@RussLawFirm.com

Lead Counsel for Ag Acceptance Corporation:

Barbara Whiten Balliette
Reid Collins & Tsai LLP
1301 S. Capital of Texas Hwy., C-300
Austin, Texas 78746
Telephone: (512) 647-6100
Facsimile: (512) 647-6129
E-Mail: BBalliette@RCTLegal.com

Local Counsel for Ag Acceptance Corporation:

Thomas C. Riney
Riney & Mayfield LLP
320 South Polk Street, Suite 600
Maxor Building
Amarillo, Texas 79101
Telephone: (806) 468-3200
Facsimile: (806) 376-4509
E-Mail: TRiney@RineyMayfield.com

Lead Counsel for Ag Acceptance Corporation [District of New Mexico]:

Richard F. Rowley II
Rowley Law Firm, L.L.C.
P.O. Box 790
Clovis, New Mexico 88102-0790
Telephone: (575) 763-4457
Facsimile: (575) 763-4450
E-Mail: R2@RowleyLawFirm.com

/s/ Justin B. Breen

Justin B. Breen